**State of Washington**
**GROWTH MANAGEMENT HEARINGS BOARD**
**FOR EASTERN WASHINGTON**

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| CITY OF WALLA WALLA, CITIZENS FOR GOOD GOVERNANCE, 1000 FRIENDS OF WASHINGTON,<br><br>Petitioner,<br><br>V.<br><br>WALLA WALLA COUNTY,<br><br>Respondent. | Case No. 02-1-0012c<br><br>**THIRD ORDER ON COMPLIANCE** |

## I. SUMMARY OF DECISION

The Petitioners are challenging Walla Walla County Commissioners' adoption of certain provisions in Ordinances 306 and 307 on November 9, 2005. These provisions allow a variety of recreational uses, such as golf courses and ATV parks, on agricultural lands in Walla Walla County designated as *agricultural lands of long term commercial significance* and set criteria with which to site certain recreational facilities or activities. The Petitioners contend the two new ordinances have not met the Growth Management Act (GMA) requirements and, in addition, implementation would be difficult where the County has no detailed farmland and soil survey. (WAC 365-10-050(2)).

The Respondent, Walla Walla County, contends the GMA has delegated to the County substantial discretion and authority to designate and conserve important Natural Resource lands, including agricultural lands. The Respondent believes the County's actions must be measured against the standard whether it is preserving a "critical mass" (City of Ellensburg v. Kittitas County, EWGMHB No. 95-1-0009, at 7 [FDO May 7, 1996]) of natural



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agricultural lands sufficient to assure the survival of the agricultural industry, citing the designation of 720,000 acres of Walla Walla County as *agricultural land of long-term commercial significance*. In addition, the Respondent believes the recreational uses allowed, other than golf courses, would not result in conversion of prime farmland to non-agricultural uses, despite the fact that these uses are being sited on lands that do not have poor soils and are otherwise suitable for agricultural purposes. Walla Walla County, rather than using the Natural Resources Conservation Service (NRCS) guidelines (Land Capability Classification System) to classify soils, has chosen to use its own criteria to determine appropriate sites for recreational uses authorized by Ordinance 307.

The Petitioners are asking the Eastern Washington Growth Management Hearings Board (Board) to issue orders of non-compliance and invalidity and remand the issue to Walla Walla County for action consistent with the GMA.

The Board finds the Petitioners have carried their burden of proof and have shown the actions of the County are clearly erroneous. Walla Walla County clearly did not follow the requirements of the GMA and WAC 365-190-050 when adopting certain sections in Ordinances 306 and 307. The County failed to protect *agricultural land of long-term commercial significance* by allowing certain non-agricultural recreational uses guided by the County's flawed criteria. The County failed to limit such non-agricultural uses to poor soils or to lands otherwise unsuited for agricultural purposes, thereby failing to encourage the agricultural industry and the conservation of agricultural land. Permitted uses other than golf courses and ATV courses are accessory uses in the Agricultural Industry and, for the most part, are allowed to exist on Agricultural Resource lands.

## II. PROCEDURAL HISTORY

On May 31, 2002, CITIZENS FOR GOOD GOVERNANCE and 1000 FRIENDS OF WASHINGTON, by and through their attorneys, Jeffrey Eustis and John Zilavy and CITY OF WALLA WALLA, by and through its attorney, Tim Donaldson, filed Petitions for Review.



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On July 29, 2002, the Board issued an Order Consolidating Cases No. 01-1-0011 and 01-1-0012 under the above number.

A Hearing on the Merits was held in Walla Walla on October 24, 2002. On November 26, 2002, the Board issued its Final Decision and Order.

On July 24, 2003, the Board received a Stipulation signed by the parties, stipulating compliance on all issues except the issue regarding agricultural lands, which has been remanded to the Board from Walla Walla County Superior Court. On July 31, 2003, the Board issued its Order Finding Partial Compliance in this matter.

On November 14, 2003, the Board held the Remand Hearing in the above captioned matter. Present for the Board was the Presiding Officer, D.E. "Skip" Chilberg and fellow Board Members Dennis A. Dellwo and Judy Wall. Present for Petitioners were Jeff Eustis and John Zilavy. Present for Respondent were Dennis Reynolds and Chuck Maduel.

On November 20, 2003, the Board received Petitioner's Second Statement of Additional Authorities.

On December 3, 2003, the Board received Walla Walla County's Motion to Strike/Supplemental Brief RE: Petitioner's Second Statement of Additional Authorities.

On December 11, 2003, the Board received Petitioner's Response by Citizens for Good Governance and 1000 Friends of Washington to Walla Walla County's Motion to Strike and Motion to Strike Walla Walla County's Supplemental Briefing.

On December 16, 2003, the Board entered its Order on Remand.

On March 23, 2004, the Board held a status conference in this matter.

On April 6, 2004, the Board received from Respondent's attorney a proposed schedule for achieving compliance with the Board's Order on Remand.

On July 13, 2004, Walla Walla County submitted a request to extend the compliance phase in this matter.

On August 4, 2004, the Board received Petitioners' request for a telephonic hearing to consider the County's request for extension.



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On August 16, 2004, the Board held a telephonic status conference. Present for the Board was the Presiding Officer, D.E. "Skip" Chilberg and fellow Board Members Dennis A. Dellwo and Judy Wall. Present for Petitioners were Jeff Eustis and John Zilavy. Present for Respondent were Dennis Reynolds.

On August 25, 2004, the Board received a proposed compliance schedule from Respondent's attorney Dennis Reynolds.

On November 18, 2004, the Board held a telephonic Status Conference. Present were Presiding Officer, John Roskelley and Board Members Judy Wall and Dennis Dellwo. Present for Petitioners were Jeff Eustis and John Zilavy. Present for Respondent was Dennis Reynolds. The Board issued an Order setting the compliance hearing and briefing schedule on December 15, 2004.

On February 10, 2005, the Board held the compliance hearing. Present were Presiding Officer, John Roskelley and Board Members Judy Wall and Dennis Dellwo. Present for Petitioners was Jeff Eustis. Present for Respondent was Dennis Reynolds.

## III. STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Washington Supreme Court has summarized the standards for Board review of local government actions under Growth Management Act. It was stated:

> The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. RCW 36.70A.280.302. The Board "shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the county, or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an action "clearly erroneous" the Board must be "left with the firm and definite



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> conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1,* 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

*King County v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 552, 14 P.3d 133, 138 (2000).

The Board will grant deference to counties and cities in how they plan under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 561, 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County,* and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and goals of the GMA." *Thurston County v. Cooper Point Association,* 108 Wn.App. 429, 444, 31 P.3d 28 (2001).

The Board has jurisdiction over the subject matter of the Petition for Review. RCW 36.70A.280(1)(a).

## IV. ISSUES PRESENTED

Do Ordinances 306 and 307, adopted by the Walla Walla County Board of County Commissioners, allowing certain recreational/cultural uses on designated *agricultural lands of long-term commercial significance,* comply with the GMA?

## V. ARGUMENT, DISCUSSION AND ANALYSIS

On December 16, 2003, the Eastern Washington Growth Management Hearings Board issued its Order on Remand, directing Walla Walla County to come into compliance with provisions of the GMA. Specifically, the Board found that the County's Code, Title 17, did not require protection of designated *agricultural land of long-term commercial significance* and directed the County to provide standards and criteria for proposed conversion of agricultural lands to recreational uses and to provide standards and criteria



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within its development regulations to protect agricultural lands from improper conversion to non-agricultural uses.

Walla Walla County, after two extensions of time to develop new regulations that they contend would meet the Board's Order and complete its public participation process, passed Ordinances 306 and 307 on November 9, 2004.

Ordinance 306 is a Comprehensive Plan Text Amendment to Walla Walla County's Comprehensive Plan, Land Use Chapter 7, "Resource Land Sub-Element Policies". According to the County's Findings of Fact, the Ordinance, by adding Policy RS-3 and Policy RS-10, prohibits some non-agricultural recreational uses previously allowed and restricts certain non-agricultural uses from being sited on land designated as lands of *long-term commercial significance*.

Ordinance 307 is a Zoning Code Text Amendment to Walla Wall County Code, Chapters 17.08 and 17.16. The Ordinance adds definitions of allowed recreational uses in Chapter 17.08 and changes the Recreational/Cultural Land Use Matrix in Chapter 17.16 to include the new recreational uses allowed in agricultural zones. Chapter 17.16 also specifies the development criteria under which the new recreational uses can be sited.

The Petitioners asked the Hearings Board for a Compliance Hearing to determine if Walla Walla County has followed the Hearings Board's Order on Remand.

**Motion to Strike:**

The Board held the Compliance Hearing on February 10, 2005. The first order of business was to rule on the Respondent's Motion to Strike submitted January 29, 2005. Both parties were given time to argue the merits of the motion.

The Respondent argued that all of the language sought to be stricken (portions 1. through 8., Walla Walla County's Motion to Strike) makes inappropriate legal arguments based on the premises that: (1) Walla Walla County did not actually designate its Natural Resource lands until its special counsel at oral argument in the hearing on the challenge to the County's Comprehensive Land Use Plan made the designation for the Walla Walla



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County Commissioners; (2) that the County failed to survey its farmland soils prior to designating agricultural lands by adoption of its Comprehensive Plan; (3) that the County failed to follow State Guidelines when designating its agricultural lands; and (4) that Walla Walla County even today has no information as to what constitutes its prime farmlands, soils, or other factors to determine if land is suitable for farming. The Respondent detailed its reasoning behind each of the four points, which included submission of the Walla Walla County Conservation District's Long Range Plan with maps and a variety of language in the State's Washington Administrative Code (WAC) and Revised Code of Washington (RCW).

The Petitioners disagree and believe that a Motion to Strike by the Respondent was inappropriate prior to the Compliance Hearing and contend that the Respondent's option was to respond to the argument in their brief, not file a Motion to Strike. In addition, the Petitioners believe that just because the Respondent disagreed with the Petitioners' characterization does not mean there is sufficient evidence to strike significant portions of the Petitioners' brief. The Petitioners argue it was an error on the Respondent's part not to appeal the language to the Superior Court, so the (Hearings) Board's decision is now law. The symptom of Walla Walla County's inadequate knowledge of their soils, the Petitioners argue, is the fact that the County only outright prohibits the most egregious of the uses, ATV parks and golf courses, on 23,000 acres of land of the 721,000 acres identified as Land of Agricultural Significance and in the relatively small exclusive agricultural zone (Petitioners' Compliance Hearing Brief in Reply).

The Board unanimously refused to strike those portions of the Petitioner's brief objected to by the Respondent. The Board held it would use its discretion in the weight given the language the Respondent asked to be stricken. The Board authorized the addition of certain documents to the record, as requested by the County, to address the issues raised in the Petitioners' brief.



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**The Parties Positions:**

The Petitioners believe Ordinances 306 and 307 have not met the GMA requirements to protect and conserve agricultural lands of commercial significance and Ordinance 306 does not meet the requirements imposed by WAC 365-190-050, sections (1) and (2). The Respondent disagreed and asked the Board to find the County in compliance. They contend they have used the innovative zoning techniques allowed by RCW 36.70A.177.

**Ordinance 306:**

As reported above, Ordinance 306 adopts two new comprehensive plan policies, which identify "productive farmland" that should receive protections greater than other farmland and allows certain limited recreational and community-oriented cultural land uses in three of the four agricultural zones. The Petitioners assert that this new policy cannot comply with the GMA for three reasons: (1) the Ordinance is based on outdated mapping that doesn't take into account changes in irrigated land since the early 1990's; (2) the Ordinance is not based on a detailed farmland and soil survey as required by the GMA and WAC 365-190-050 and; (3) the County has designated 721,000 acres or all of its agricultural land as *land of long-term commercial significance.* The County is therefore obligated to recognize and implement the GMA's *agricultural conservation mandate* on all of the land so designated. According to the Petitioners, there is no GMA basis for declaring a small percentage of its agricultural land worthy of greater protection than the rest, since all of Walla Walla County's agricultural land is designated *agricultural land of long-term commercial significance.* In essence, Ordinance 306 fails to comply with the GMA because it effectively omits significant acreage of prime and unique farmland and the County's action directly and imminently threatens productive agricultural land.

The Petitioners stress the importance of the GMA's goal #8, which, in part, encourages the "conservation of...productive agricultural lands, and discourage incompatible uses." They also stress that Walla Walla County has designated all of its agricultural land as



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*agricultural land of long-term commercial significance*, which carries with it the burden of certain obligations, mainly the protection and preservation of such lands from loss.

The Respondent believes Ordinance 306 is not at issue. Whether or not the County designated its agricultural lands of long-term significance or properly conducted a soils inventory to support its designation are issues the County feels were already decided by this Board in a prior action and refer the Board to Walla Walla County's Motion to Strike.

Walla Walla County contends it adopted its Comprehensive Plan knowing exactly what lands it was designating *agricultural lands of long-term commercial significance*. The Respondent claims the County followed State Guidelines and indicates it had sufficient soil information to make its decision. The nine policies in the CTED Guidelines are clear and not one of them requires the County to do a "detailed soil survey" (Petitioners' Compliance Hearing Brief, p. 3). In addition, the Respondent indicates the County's new regulations establish a site-specific environmental review process to protect prime agricultural lands. The new regulations have restrictive performance standards, which by definition eliminate certain recreational uses from being sited, such as ATV parks and golf courses, on prime designated agricultural land.

The Respondent claims that Ordinance 306 further protects designated agricultural lands and specifies in RS-3 that lands in the Exclusive Agricultural Zone be "preserved and protected to a greater degree than any other farm land in Walla Walla County." Policy RS-10 further ensures that prime agricultural land is not used for incompatible purposes by establishing a site-specific review.

**Ordinance 307:**

Ordinance 307 adopts new development regulations that allow, under certain conditions, the development of a variety of recreational and cultural uses on agricultural lands. They are golf courses, ATV parks, crop mazes, equestrian parks, riding academies, private and public stables, hunting and fishing lodges and other accessory uses.



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The Petitioners allege two of the uses allowed, golf courses and ATV parks, cannot be located on *agricultural lands of long-term commercial significance* under the circumstances outlined in Ordinance 307 because the GMA only allows non-agricultural uses on these lands that both encourage the agricultural industry and conserve agricultural land. The other new recreational uses adopted by the County can be sited on agricultural land and comply with the GMA, but only under the right circumstances, i.e. lands with less productive soils and/or lands unsuitable for farming (RCW 36.70A.177).

The key argument by the Petitioners is that Walla Walla County has designated 93% of its land as *agricultural land of long-term commercial significance*, thus the County is required under the GMA (36.70A.060) to adopt regulations that will conserve this land:

> Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to *assure the conservation of agricultural*, forest, and mineral resource lands designated under RCW 36.70A.170... Such regulations shall assure that the use of lands adjacent to agricultural, forest or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

According to the Petitioners, "By so designating, whether or not the County has conducted the detailed soil surveys required in the minimum guidelines, the County has incurred the obligation to adopt protective policies and regulations."

The Petitioners contend that RCW 36.70A.177 significantly limits (if not prohibits) the types of uses authorized by Walla Walla County in Ordinance 307 by stating that any non-agricultural use should conserve agricultural land and encourage the agricultural economy. They state in their brief, "The recreational and cultural uses allowed are clearly non-agricultural." (Petitioners Compliance Hearing brief – p. 20; line 9). The Washington State Supreme Court considered this issue of non-agricultural uses on *agricultural lands of long-*



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*term commercial significance* in *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 142 Wn.2d 543, 14 P.3d 133 (2000).

**Golf Courses:**

The Petitioners take golf courses and ATV parks separately from the other allowed uses because, in their opinion, they clearly don't comply with the GMA. Both necessitate the destruction and displacement of farmland and are incompatible when adjacent to a working farm (Petitioners' Compliance Hearing Brief, p. 18). They contend that the County, in an effort to site these facilities on agricultural land, substituted its own criteria (i.e. slopes in excess of 5% on at least 1/3 of the development; irrigated or lands receiving less than 18" of average annual rainfall; within two miles of an urban area), which have little to do with whether the land can be farmed or the soils are prime, instead of using established GMA guidelines. Furthermore, the Petitioners are concerned about the County's process of administrative review, an argument the Hearings Board decided in their Order on Remand.

The Respondent acknowledges that a golf course will result in the conversion of agricultural land, but argues they have set a limit of three new golf courses, which is a small percentage of agricultural land (700 to 1000 acres) compared to the amount protected (721,000 acres), and a golf course would have to be on non-prime farm lands near urban growth areas or rural activity centers. In addition, Ordinance 307 requires that a facility must meet at least two of the four criteria necessary to site a golf course. (The County amended 307 after the appeal and hearing to require three of the four criteria. See WWCC Resolution 05044, Feb. 15, 2005. This change is not part of the record). They also point to the County's process of an administrative review or site-specific environmental review to ensure that golf courses are allowed only in areas that will not jeopardize productive farmland.

**ATV Parks:**

The Petitioners' arguments here are similar to those for Golf Courses. The Petitioners contend RCW 36.70A.177 does not contain an exemption for uses that don't convert



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farmland and ATV parks are not any different than a soccer field (*King County*). They also contend that the noise and dust raised by an ATV park are incompatible with livestock and other farming practices.

The Respondent argues that ATV parks are not subject to RCW 36.70A.177 because the parks don't result in the conversion of agricultural land. Second, the Respondent argues that the Petitioners need proof that ATV parks are incompatible with agriculture and they contend there is no evidence to that effect.

The Board notes in the Walla Walla County Conservation District Long Range Plan, pg. 104, III. Range, #9, "All terrain vehicles (ATV's) cause accelerated erosion due to indiscriminate use on land other than all-weather roads." This is a document added to the Index of Record by the Respondent under the testimony of Connie Krueger and indicates ATV use is incompatible with agricultural land use.

**Other Recreational Uses Allowed by Ordinance 307:**

The Petitioners agree that crop mazes, equestrian parks, hunting and fishing lodges, riding academies and public and private stables could be allowed in designated agricultural areas, but only if RCW 36.70A.177 was satisfied and the uses are sited on land with poor soil or not commercially viable. Again, the Petitioners point out that the County did not adequately document and designate its soils and locations, so these uses would not comply with the GMA. In addition, the activities allowed do not rise to the level of commercial agricultural *production*, as defined by RCW 36.70A.177(2), but meet the definition of "accessory uses" as contemplated in RCW 36.70A.177.

The Respondent believes these are accessory uses *and* several are agricultural. As such, they can be allowed anywhere in the agricultural designations regardless of soil quality or suitability for farming. The Respondent points to the quantity of acreage in Walla Walla County currently in open space and prophesizes that neither Petitioner "seriously contends that allowing a few discrete cultural/recreational uses on some Natural Resource



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lands will result in the permanent loss of a substantial amount of the agricultural lands such as to threaten the viability of the agricultural industry in Walla Walla County."

The Respondent feels strongly that they have followed RCW 36.70A.177, which directs incompatible uses on designated agricultural lands be "discouraged", not prohibited. According to the Respondent, the County's new development regulations eliminate all discretion by discontinuing a conditional use permitting process (CUP), cull out a large number of recreational uses incompatible with agriculture and impose strict performance standards on other allowed uses that do not permanently convert the land from agriculture to nonagricultural uses. Further more, the Respondent cites the Washington State Supreme Court case, *King County v. CPSGMHB*, 142 WN.2d at 560, as predating the current changes in the law, specifically the words changed by the Legislature that seem to strengthen and elevate the open space and recreation planning goals to equal in importance the GMA Goal #8, the Natural Resource industry goal.

**LEGAL ANALYSIS:**

The Growth Management Act (GMA) requires Walla Walla County to identify and designate agricultural lands not already characterized by urban growth and that has long-term significance for the commercial production of food or other agricultural products. (RCW 36.70A.170(1)(a)). The County is required to assure the conservation of agricultural resource lands that have been so designated.

The Board recognizes the effort Walla Walla County has made to comply with the Board's Order on Remand and the GMA. Many of the recreational and cultural uses now allowed under Ordinances 306 and 307 are accessory uses under RCW 36.70A.177(3)(a) and compatible with agriculture. Crop mazes, equestrian parks, hunting and fishing lodges, riding academies, and public and private stables are activities and facilities that can enhance the commercial value and economy of agricultural land. The Ordinances, as described, meet a definable public need and result in fewer non-agricultural uses on lands designated as *agricultural lands of long-term commercial significance.*



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Unfortunately, portions of the Ordinances do not comply with the GMA. They allow certain non-agricultural recreational uses on *agricultural lands of long-term commercial significance.* Two of the allowed recreational uses, golf courses and ATV parks, do not conserve agricultural lands or encourage the agricultural economy as required by RCW 36.70A.177.

RCW 36.70A.177 allows innovative zoning techniques to conserve agricultural lands and encourage the agricultural economy. That statute requires nonagricultural uses be limited to lands with poor soils or otherwise not suitable for agricultural purposes. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 142 Wn.2d 543, at 561, 14 P.3d 133 (2000).

RCW 36.70A.177 states:

**Agricultural lands – Innovative zoning techniques—Accessory uses**

1. A county or a city may use a variety of innovative zoning techniques in areas designated as *agricultural lands of long-term commercial significance* under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. A county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

2. Innovative zoning techniques a county or city may consider include, but are not limited to:

   (a) Agricultural zoning, which limits the density of development and restricts or prohibits non-farm uses of agricultural land and may allow accessory uses that support, promote, or sustain agricultural operations and productions as provided in subsection (3) of this section;

. . . .

3. (a) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

   (i) Accessory uses shall be located, designed, and operated so as not to interfere with natural resource land uses and shall be accessory to the growing of crops or raising of animals;



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(ii) Accessory commercial or retail uses shall predominately produce, store, or sell regionally produced agricultural products from one or more producers, products derived from regional agricultural production, agriculturally related experiences, or products produced on-site. Accessory commercial and retail uses shall offer for sale predominantly products or services produced on-site; and

(iii) Accessory uses may operate out of existing or new buildings with parking and other supportive uses consistent with the size and scale of existing agricultural buildings on the site but shall not otherwise convert agricultural land to nonagricultural uses

(b) Accessory uses may include compatible commercial or retail uses including, but not limited to:

(i) Storage and refrigeration of regional agricultural products;

(ii) Production, sales, and marketing of value-added agricultural products derived from regional sources;

(iii) Supplemental sources of on-farm income that support and sustain on-farm agricultural operations and production;

(iv) Support services that facilitate the production, marketing, and distribution of agricultural products; and

(v) Off-farm and on-farm sales and marketing of predominately regional agricultural products and experiences, locally made art and arts and crafts, and ancillary retail sales or services activities.

A County's use of RCW 36.70A.177 has been reviewed by the Washington State Supreme Court. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 142 Wn.2d 543, at 561, 14 P.3d 133 (2000) reviews a situation similar to the one before us here in Walla Walla County. In *King County, supra,* the County acquired several parcels of land for development of new athletic facilities. The properties contained prime agricultural soils that



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had been fallow for over 30 years. The County entered into a 30-year concession agreement with a youth soccer association for management of the new facilities on these lands. The agreement contained a provision to automatically extend the agreement to adjacent parcels for soccer use.

The County amended its Comprehensive Plan to allow such use upon agricultural lands, but limited the circumstances so as to allow the future use of the property for agricultural purposes when the recreational use is abandoned. The County also adopted numerous regulations that limited impact to the agricultural lands surrounding the soccer fields and to the site itself. The recreational use was declared to be interim and secondary to the County's preservation of agricultural lands.

Upon review of the statutory and case law, the Supreme Court found that, "Although the planning goals are not listed in any priority order in the Act, the verbs of the agricultural provisions mandate specific, direct action. The County has a duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry." *King County,* at 558. The later amendment of RCW 36.70A.020(9) does not change the Hearings Board's belief that the County continues to have the duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the industry.

The Supreme Court found in *King County* at 558 that the County's interpretation failed to give effect to the Legislature's stated intent to conserve such lands in order to maintain and enhance the agricultural industry.

The Court looked at RCW 36.70A.177, Innovative Zoning Techniques. The Court first defined "innovative zoning". The Court found that "in order to constitute an innovative zoning technique consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for maintenance and enhancement of the agricultural industry." *King County,* at 560. The Court determined the trial court erroneously found the County's amendments qualified as an "innovative zoning technique" under RCW 36.70A.177. The trial court had found that it was "discretionary"



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rather than "mandatory" that the innovative techniques be limited "to lands with poor soils or otherwise not suitable for agricultural purposes." The Supreme Court found this interpretation misplaced discretion. The Court instead interpreted the language to properly read as:

> The discretion is applied to "encouraging nonagricultural uses," not to the land eligible for such encouraged uses. Read logically, this phrase means that the County may encourage nonagricultural uses where the soils are poor or the land is unsuitable for agricultural. It should not be read that the County may encourage nonagricultural uses whether or not the soils are poor or unsuitable for agriculture. The evidence does not support a finding that the subject properties have poor soils or are otherwise not suitable for agricultural purposes. Therefore, the properties in this case do not qualify for "innovative zoning techniques." *King County* at 560.

The Supreme Court in *King County* found that the County has broad discretion to develop a Comprehensive Plan and development regulations that are suited to its local circumstances:

> However, the County's proposed action to convert agricultural land to active recreation does not appear in any of the Act's suggested zoning techniques. After properly designating agricultural lands in the APD, the County may not then undermine the Act's agricultural conservation mandate by adopting "innovative" amendments that allow the conversion of entire parcels of prime agricultural soils to an unrelated use. The Explicit purpose of RCW 36.70A.177 is to provide for creative alternatives that <u>conserve</u> agricultural lands and <u>maintain</u> and <u>enhance</u> the agricultural industry. *King County* at 561. (Emphasis provided by Supreme Court).

Walla Walla County asks the Board here to limit the effect of this decision to "prime agricultural soils". The Board will not do this. The Supreme Court's decision dealt with agricultural resource lands that have been identified by the County as required by the GMA. The fact that King County's lands that were to be used for soccer fields were prime does not restrict the decision to lands having been designated prime by the County. Such a conclusion would ignore the bulk of the Supreme Court's decision in *King County.*



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The Court went on to conclude that RCW 36.70A.177 allows for innovative zoning techniques, but "includes no provision for the recreational use designated here. Read as the County would read it, the amendment would work as a virtual abandonment of the APD designation." *King County* at 562. The Courts final conclusion holds that, "[N]nothing in the Act permits recreational facilities to supplant agricultural uses on designated lands with prime soils for agriculture." *King County* at 562.

The farmland in the King County case had not been farmed for 30 years. The land in Walla Walla County, subject to an application for a golf course, is irrigated farmland presently in production. There is no contention that this land or other available lands are of poor soil or lands unsuitable for farming. In fact, the criterion in no way excludes good quality farmland from the non-agricultural uses offered by the County's amendment. The criteria listed exclude very little good farmlands from consideration. The limitation to choosing two of the four criteria would allow these activities to occur throughout most of the County's farmlands. The fact that the County is blessed with so much good farmland or that the County has limited the number of golf courses does not exempt them from the requirements of the GMA. The County still must protect and preserve *agricultural lands of long-term commercial significance*.

It is important to note the following passage from the Walla Walla County Conservation District Long Range Plan submitted by Connie Kruger, pages 73 and 74 under Prime Agricultural Land:

> Walla Walla County has been blessed with a substantial amount of cropland that can be classed as "prime". Simply stated, prime farmland is the best there is in the Nation—there is no better. Recent estimates put the acreage of prime farmland in the District, both dryland and irrigated, at about 66,000 acres. There are also approximately 46,500 acres that are potentially prime lacking only irrigation water. As shown by the Prime Land Map, existing prime land is located in the Walla Walla area, along major stream corridors, and in the irrigated areas around Eureka. As pointed out in the previous section on irrigated cropland, prime land is being lost in the Walla Walla-College Place vicinity at the rate of about 20 acres per year. The annual revenue foregone is



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> over $100,000, but the more severe loss is the irreversible change of land use—from prime cropland to urban.

This statement indicates two very important points. The first is Walla Walla County did not adequately protect approximately 43,000 acres of "prime" farmland (66,000 – 23,000 = 43,000). The second is a golf course within two miles of the town of Walla Walla or College Place would most likely remove 200 to 250 acres of "prime" agricultural land presently irrigated and farmed commercially. A non-agricultural use, such as a golf course, would not "encourage the agricultural economy or conserve farmland" as required by RCW 36.70A.177.

**Conclusion:**

The Eastern Washington Growth Management Hearings Board (Board) has jurisdiction to review the County's Comprehensive Plan and the development regulations established to implement the Plan. Ordinances 306 and 307 permit certain recreational and/or cultural uses that convert agricultural land to non-agricultural use without limiting the conversion specifically to land with poor soils or lands otherwise unsuited for agriculture and will not protect *agricultural lands of long-term commercial significance.* The Board believes *King County* is applicable in this case.

The Board finds the Petitioner has satisfied their burden of proof and finds two of the allowed recreational/cultural uses, golf courses and ATV parks, clearly erroneous in view of the entire record and non-compliant with 36.70A.177, in particular subsections (1), (2)(a), and (3)(a)(i). The Board has had a good working relationship with Walla Walla County in the past and chooses not to invoke invalidity on these two uses at this time. We hope this remedy will not be necessary.

The Board finds the other uses, crop mazes, equestrian parks, hunting and fishing lodges, riding academies and private and public stables, accessory uses. One of these activities, crop mazes, could not exist without being located on farmable soils. The other uses, including equestrian parks, hunting and fishing lodges, riding academies and public



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and private stables are allowed by the GMA if they support, promote, or sustain agricultural operations and production. (RCW 36.70A.177(2)(a)). Ancillary buildings, such as lodges and indoor riding facilities, shall be located in areas that comply with RCW 36.70A.177(1), while the outdoor activities of each use, such as hunting, fishing and trail riding will be on and around agricultural lands. Commercial sales are limited to RCW 36.70.177(3)(a)(ii) and (3)(b)(i-v), while convenience-type retail stores are prohibited.

## VI. FINDINGS OF FACTS

1. Walla Walla is a county planning under Chapter 36.70A.
2. Petitioners participated in the original hearings before the Board of County Commissioners regarding the development of the subject development regulations.
3. Walla Walla County adopted Ordinances 306 and 307 on November 9, 2004, changing Walla Walla County's Comprehensive Plan and implementing development regulations, which permit specific recreational non-agricultural related activities on *agricultural lands of long-term commercial significance*.
4. Walla Walla County did not follow the GMA's or Board's directive to protect *agricultural lands of long-term commercial significance* when they passed Ordinances 306 and 307.
5. RCW 36.70A.177 "Innovative zoning techniques" is applicable in this case.
6. Walla Walla County Ordinances 306 and 307 fail to protect *agricultural lands of long-term commercial significance* by allowing certain non-agricultural recreation and cultural uses on lands other than those with poor soils or not otherwise suitable for agricultural use. The County is not in compliance with the GMA with respect to protection of agricultural land of commercial significance. (RCW 36.70A.050).



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## VII. **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over the parties and subject matter in this case.
2. The Petitioners have standing to challenge the County's actions herein.
3. The Growth Management Act not only requires the County to identify *agricultural lands of long-term commercial significance*, but the County is required to protect and preserve such lands.
4. RCW 36.70A.177 permits innovative zoning techniques, but such techniques should be designed to conserve agricultural land and encourage the agricultural economy.
5. RCW 36.70A.177 permits nonagricultural uses, but only on lands with poor soils or otherwise not suitable for agricultural purposes.
6. Walla Walla County has permitted nonagricultural uses on agricultural lands other than lands with poor soils or otherwise not suitable for agricultural purposes, in violation of the GMA.

## **VIII. ORDER**

1. Walla Walla County's Ordinance 306 is found in non-compliance with the Growth Management Act requiring protection of designated agricultural land of long term commercial significance. Walla Walla County is directed to provide standards and criteria within its Comprehensive Plan to protect *agricultural land of long-term commercial significance*.

2. Walla Walla County's Ordinance 307 is found in non-compliance for permitting certain non-agricultural uses on agricultural lands of long term commercial significance. Walla Walla County is directed to remove golf courses and ATV parks from permitted uses in agricultural zones designated *agricultural land of long-term commercial significance*. Crop mazes, equestrian parks, hunting and fishing lodges, riding academies, and public and private stables are accessory uses in agricultural areas. Walla Walla County is directed to permit the building facilities for these accessory uses, such as hunting lodges and indoor arenas, only on lands with poor soils or unsuitable for farming designated by NRCS soil



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criteria and the Walla Walla County Conservation District Long Range Plan maps or in areas already associated with farm buildings.

3. Walla Walla County must take the appropriate legislative action to bring themselves into compliance with this Order by **June 8, 2005, 90 days** from the date issued.

4. The County shall file with the Board **by June 16, 2005,** an **original and four copies** of a Statement of Action Taken to Comply (SATC) with the GMA, as interpreted and set forth in this Order. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy to the SATC, with attachments, on the Petitioner. By this same date, the County shall file a "Remand Index," listing the procedures and materials considered in taking the remand action.

5. By no later than **June 30, 2005,** the Petitioner shall file with the Board an **original and four copies** of Comments and legal arguments on the County's SATC. Petitioner shall simultaneously serve a copy of its Comments and legal arguments on the County.

6. By no later than **July 14, 2005,** the County shall file with the Board an **original and four copies** of the County's Response to Comments and legal arguments. The County shall simultaneously serve a copy of such Response on Petitioner.

7. By no later than **July 21, 2005**, the Petitioner shall file with the Board an **original and four copies** of their Reply to Comments and legal arguments. The Petitioner shall serve a copy of its brief on the County.

8. Pursuant to RCW 36.70A.330(1) the Board hereby schedules the **Compliance Hearing** in this matter for **July 26, 2005, at 10:00 a.m., WSDOT Building, 1210 G Street, Walla Walla, WA**. With the consent of the parties, the compliance hearing may be conducted telephonically.

If the County takes legislative compliance actions prior to the date set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.



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**Pursuant to RCW 36.70A.300(5), this is a Final Order for purposes of appeal. Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this Order.**

**SO ORDERED this 10th day of March 2005.**

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
John Roskelley, Board Member

_____
Judy Wall, Board Member

_____
Dennis Dellwo, Board Member



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